

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
December 3, 2008 Session

**IN RE GABRIEL L.**

**Appeal from the Circuit Court for Blount County  
No. E-20620 W. Dale Young, Judge**

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**No. E2008-01294-COA-R3-PT - FILED MARCH 26, 2009**

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This is termination of parental rights case. On January 14, 2003, Gabriel L. (“the Child”) was born to Holly S. (“Mother”) and Bryan C. (“Father”). In April 2005, the Child’s maternal grandmother, Judy L. (“Judy”), and her husband, George L. (“George”)(collectively, “Petitioners”), petitioned the court to adopt the Child and terminate Father’s parental rights.<sup>1</sup> At the conclusion of trial, the court held that the grounds alleged in support of the petition had been established and ordered that Father’s parental rights be terminated. Father appeals, challenging the trial court’s determination that grounds to terminate were established by clear and convincing evidence. Father also challenges the trial court’s conclusion that termination was shown, by clear and convincing evidence, to be in the Child’s best interest. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court  
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JON KERRY BLACKWOOD, Sp.J., joined.

Robert W. White, Maryville, Tennessee, for the appellant, Bryan C.

Charles Dungan, Maryville, Tennessee, for the appellees, Judy L., George L., and Holly S.

Lance A. Evans, Maryville, Tennessee, guardian ad litem for Gabriel L.

**OPINION**

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<sup>1</sup> Mother joined in the petition for the purpose of consenting to the adoption and the termination of her parental rights to the Child.

I.

Trial was held in April 2008. Judy testified that at the time of the Child's birth, Mother lived alone in a trailer located near the Petitioners' home. She noted that Mother suffered from bipolar disorder and received disability benefits as her only source of income. Judy said that she served as Mother's guardian and handled all of her financial affairs. She stated she never saw Father before the Child's birth and never received any money from him. She said that after the Child was born, she and her husband continued to provide additional financial support for Mother and the Child. She said that in April 2003, when the Child was about three months old, she obtained physical custody of him after she became afraid for his safety. Judy explained that this was the result of an incident in which "a man came to the trailer and was shooting" in an attempt to recover property that he believed Father had stolen from him. According to Judy, Father, Mother and the Child were inside the trailer at the time. She said that Father was arrested that day. Judy testified that she had retained physical custody of the Child ever since then.

Judy further testified that she was granted custody of the Child in May 2003 following a hearing in juvenile court. She said that Father was present at the hearing but he was not granted visitation. She said that Father had never been in the Child's presence since she obtained custody. According to Judy, Father had not called her or made any other efforts, directly or indirectly, to see the Child and had never provided any financial support for him. According to Judy, the Child was healthy, attended a Head Start program, and was slated to begin kindergarten the following year. Judy said the Child participated in the choir at church. She said that Petitioners and their other two children were the only family the Child had ever known and said that the child referred to Petitioners as "mom" and "dad." Defense counsel introduced a copy of a letter from Gardner Place, a county facility, reflecting that an application for visitation with the Child by Father had been mailed to Judy on December 14, 2004. She said she did not receive the letter and knew nothing about Gardner Place.

George testified next and reiterated that other than social security benefits, he and his wife had received no financial support from Father for the support of Mother or the Child. He said that the Child and Petitioners' older son were "like siblings" and played together. He said other than some greeting cards mailed since 2005 from a Sevierville address, he had received no correspondence for the Child from Father and had not spoken with Father since the Child's birth. He was not familiar with Gardner Place and did not recall receiving any mail from it.

The next witness was Adrian Jones. Jones testified that he was pastor at Piney Grove Baptist Church where Petitioners were members and the Child attended the children's church services. Jones said that there was a parent-child bond between Petitioners and the Child. He described the Child as "very bubbly, very enthusiastic. . . ."

Janet Spencer testified next. She said that she had been engaged to Judy's brother, but he had died before they were married. After her fiancée's death, she continued to visit the Petitioners and had known the Child since he was born. Spencer said she visited the Petitioners every weekend

and frequently babysat the Child and his younger half-sibling.<sup>2</sup> She said they went for walks, rode bikes and generally had fun. According to Spencer, the Child had bonded with the Petitioners and appeared to be happy. Spencer said she did not know Father and had seen him only once before the Child's birth.

The final witness was Father who testified that at the time of the hearing, he was in the custody of the Tennessee Department of Correction serving an effective 24-year sentence. He said that he had served 43 months of that sentence and was denied parole at his first hearing on April 3, 2008. His next parole hearing would be in April 2011. Regarding the status of his convictions, Father said that his petition for post-conviction relief had been denied and that an appeal of the trial court's judgment in that case was pending. Father testified that he found out about the birth of the Child from the newspaper. At that time, he was living with his grandparents. He moved into the trailer with Mother when the Child was three weeks old. According to Father, Judy "paid the bills" but he also worked to provide "food and stuff." Father said that he worked 40 to 50 hours per week earning ten dollars per hour until his arrest on April 25, 2003. He said he was free on bail from June 25, 2003, until January 21, 2005, when his bond was revoked and he had remained incarcerated since that time. Father said that while he was on bond, there was a juvenile court hearing regarding the Child at which the court had announced that Father would be permitted supervised visitation with the Child. Father said that in December 2004, he paid a fee and signed paperwork to schedule visits with the Child at Gardner Place. He said he attempted visitation with the child three times, but never saw him. Father said that termination of his parental rights was not in the Child's best interest because he loved the Child. Father said that he had two other sons that also loved the Child. Father said that, although he was in prison, he still loved all his children and wanted to visit with them. He noted that his mother and stepfather were also making efforts to adopt the Child.<sup>3</sup>

According to Father, he had attempted to visit the Child but had never directly contacted Petitioners. Father agreed that he was heavily addicted to drugs at the time of the offenses that he had committed in February and March 2005. He acknowledged testifying at his sentencing that he had smoked marijuana daily from the age of 16 and was smoking it two to three times a day and that he was taking between 10 and 15 pills each of prescription Hydrocodone and Valium per day at the time of the offenses. Upon his arrest, he realized that the drugs "kept his mind cloudy and were keeping him apart from his little boy and decided to stop taking them." At the sentencing, Father further testified that he had cut his marijuana use down to once a month and did not believe he had a drug problem anymore.

In concluding his testimony, Father said that during his 18 months of release on bond, he lived with his mother and worked several jobs in Sevierville including building cabinets, at a restaurant, and as a landscaper. He said he worked through the courts trying to get visitation with

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<sup>2</sup>Judy testified that in 2005, Petitioners had adopted another, younger son born to Mother.

<sup>3</sup>The record reflects that an intervening, pro se petition for adoption was filed by Father's mother and stepfather in September 2005 and was pending at the time of the trial below. In view of the competing adoption petitions, the trial court disposed of the petition only with regard to the termination of Father's parental rights; the matter of the Child's adoption was continued for further hearing.

the Child and “would have” offered to pay money for the Child’s support if he was allowed to see him. Father agreed that he had been released on bond for about 18 months before he contacted Gardner Place in an attempt to arrange visitation. He agreed that the incident which resulted in his arrest involved an armed man who came to the trailer looking for stolen property.

At the conclusion of the trial, the trial court terminated Father’s parental rights to the Child. In its bench ruling, the trial court stated as follows:

Based on the testimony and the evidence, the Court finds by clear and convincing evidence, first of all, [Father] has abandoned [the Child] as defined in Tenn. Code Ann. § 36-1-102(1)(A)(i) in that he has willfully failed to visit with the child and has willfully failed to provide support for the child for at least four consecutive months immediately preceding the filing of this petition on April 12, 2005. And the Court further finds that [Father] has abandoned [the Child] as defined in Tenn. Code Ann. § 36-1-102 (1)(A)(iii) in that he has willfully failed to make reasonable payments toward the support of the child’s mother during the four months immediately preceding the birth of the child.

The Court further finds that [Father] has abandoned [the Child] as defined in Tenn. Code Ann. § [36]-1-102(1)(A)(iv) in that he has willfully failed to visit or provide support or visit within four months of the inception of his incarceration and he has engaged in conduct which exhibits wanton disregard for the welfare of the child. The Court further finds that termination of [Father’s] parental rights is in the manifest best interest of [the Child].

The Court further finds that [Father] has been confined to a correctional facility as a result and order of the Circuit Court for Blount County, Tennessee, in [case numbers] C-14668 and . . . C-14846 as the result of criminal acts earning an effective sentence of twenty-three years. The Court finds that [the Child] was less than eight years of age when the sentence was enforced, and accordingly the Court finds that to be another violation by clear and convincing evidence to support the Court’s ruling of termination of parental rights.

The trial court thus found that each of the alleged grounds of abandonment had been established by the proof at trial and further, that termination of Father’s parental rights was in the Child’s best interest.

On appeal, Father presents two<sup>4</sup> issues as follows:

1. Whether the evidence presented at trial was sufficient to warrant a finding that the Child's alleged abandonment constituted willful abandonment by Father.
2. Whether the evidence established by clear and convincing evidence that the termination of Father's parental rights is in the best interest of the Child.

### III.

Our Supreme Court has clearly set out the standard of review for cases involving the termination of parental rights:

[T]his Court's duty. . . is to determine whether the trial court's findings, made under a clear and convincing standard, are supported by a preponderance of the evidence.

*In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006). The trial court's findings of fact are reviewed de novo upon the record accompanied by a presumption of correctness unless the preponderance of the evidence is otherwise. *Id.*; Tenn. R. App. P. 13(d). In weighing the preponderance of the evidence, great weight is accorded to the trial court's determinations of witness credibility, which shall not be reversed absent clear and convincing evidence to the contrary. *See Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002). Questions of law are reviewed de novo with no presumption of correctness. *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 744-45 (Tenn. 2002).

Parents have a fundamental right to the care, custody, and control of their children. *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *O'Daniel v. Messier*, 905 S.W.2d 182, 186 (Tenn. Ct. App. 1995) (*rev'd on other grounds, In re Swanson*, 2 S.W.3d 180 (Tenn. 1999)); *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988). This right "is among the oldest of the judicially recognized liberty interests protected by the Due Process Clauses of the federal and state

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<sup>4</sup>Father presents a third issue -- "Did the trial court err in terminating [Father's] parental rights based on his sentences from criminal convictions?" Father makes no reference to the record and presents no legal argument or citation to relevant authority in support of this issue. Father's entire "briefing" on this issue consists of his bald, one-sentence assertion that the trial court did err "because there were still issues related to those convictions and sentences pending on appeal." "Where a party makes no legal argument and cites no authority in support of a position, such issue is deemed waived and will not be considered on appeal." *Volunteer Concrete Walls, LLC v. Community Trust & Banking Co.*, E2006-006020COA-R3-CV, 2006 WL 3497894 at \*4 (Tenn. Ct. App. Dec. 4, 2006), *see also* Tenn. R. App. P. 27(a)(7), (b). In any event, we note that the possibility of post-conviction relief is irrelevant to the consideration of whether the statutory criteria for termination has been met. *See In re M.L.P.* 228 S.W.3d 139 (Tenn. Ct. App. 2007), *perm. app. denied*, (Tenn. App. 30, 2007).

constitutions.” *In re M.J.B.*, 140 S.W.3d 643, 652-53 (Tenn. Ct. App. 2004). “Termination of a person’s rights as a parent is a grave and final decision, irrevocably altering the lives of the parent and child involved and ‘severing forever all legal rights and obligations’ of the parent.” *Means v. Ashby*, 130 S.W.3d 48, 54 (Tenn. Ct. App. 2003) (quoting T.C.A. § 36-1-113(l)(1)). “Few consequences of judicial action are so grave as the severance of natural family ties.” *M.L.B. v. S.L.J.*, 519 U.S. 102, 119, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996) (quoting *Santosky v. Kramer*, 455 U.S. 745, 787, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)).

While parental rights are superior to the claims of other persons and the government, they are not absolute, and they may be terminated upon appropriate statutory grounds. See *Blair v. Badenhope*, 77 S.W.3d 137, 141 (Tenn. 2002). Due process requires clear and convincing evidence of the existence of the grounds for termination of the parent-child relationship. *In re Drinnon*, 776 S.W.2d at 97. T.C.A. § 36-1-113 (Supp. 2007) governs termination of parental rights in this state. A parent’s rights may be terminated only upon “(1) [a] finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and (2) [t]hat termination of the parent’s or guardian’s rights is in the best interests of the child.” T.C.A. § 36-1-113(c); *In re F.R.R., III*, 193 S.W.3d at 530. Both of these elements must be established by clear and convincing evidence. See T.C.A. § 36-1-113(c)(1); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). The existence of at least one statutory basis for termination of parental rights will support the trial court’s decision to terminate those rights. *In re C.W.W.*, 37 S.W.3d 467, 473 (Tenn. Ct. App. 2000) ( *abrogated on other grounds*, *In re Audrey S.*, 182 S.W.3d 838 (Tenn. Ct. App. 2005)).

The heightened burden of proof in parental termination cases minimizes the risk of erroneous decisions. *In re C.W.W.*, 37 S.W.3d at 474; *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Evidence satisfying the clear and convincing evidence standard establishes that the truth of the facts asserted is highly probable, *State v. Demarr*, No. M2002-02603-COA-R3-JV, 2003 Tenn. App. LEXIS 569, 2003 WL 21946726, at \*9 (Tenn. Ct. App. M.S., filed August 13, 2003), and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence. *In re Valentine*, 79 S.W.3d at 546; *In re S.M.*, 149 S.W.3d 632, 639 (Tenn. Ct. App. 2004); *In re J.J.C.*, 148 S.W.3d 919, 925 (Tenn. Ct. App. 2004). It produces in a fact-finder’s mind a firm belief or conviction regarding the truth of the facts sought to be established. *In re A.D.A.*, 84 S.W.3d 592, 596 (Tenn. Ct. App. 2002); *Ray v. Ray*, 83 S.W.3d 726, 733 (Tenn. Ct. App. 2001); *In re C.W.W.*, 37 S.W.3d at 474.

IV.

A.

In the present case, the trial court terminated Father's parental rights pursuant to Tenn. Code Ann. § 36-1-113 (g)(1) and (6)(2005).<sup>5</sup> These statutory provisions provide as follows:

(g) Initiation of termination of parental or guardianship rights may be based upon any of the following grounds:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

\* \* \*

(6) The parent has been confined in a correctional or detention facility of any type, by order of the court as a result of a criminal act, under a sentence of ten (10) or more years, and the child is under eight (8) years of age at the time the sentence is entered by the court.

As relevant to the present case, Tenn. Code Ann. § 36-1-102, referenced in subsection (g)(1), above, provides for the termination of parental rights on the grounds of abandonment as follows:

(1)(A) For purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, "abandonment" means that:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent(s) or guardian(s) of the child who is the subject of the petition for termination of parental rights or adoption, that the parent(s) or guardian(s) either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child;

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(iii) A biological or legal father has either willfully failed to visit or willfully failed to make reasonable payments toward the support of the child's mother during the four (4) months immediately preceding the birth of the child; provided, that in no instance shall a final order

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<sup>5</sup>Tenn. Code Ann. § 36-1-113(g) was amended effective January 1, 2009. As the amendment has no effect on the present case, we will cite throughout this opinion to the version of the statute in effect at the time of the trial.

terminating the parental rights of a parent as determined pursuant to this subdivision (iii) be entered until at least thirty (30) days have elapsed since the date of the child's birth;

(iv) A parent or guardian is incarcerated at the time of the institution of an action or proceeding to declare a child to be an abandoned child, or the parent or guardian has been incarcerated during all or part of the four (4) months immediately preceding the institution of such action or proceeding, and either has willfully failed to visit or has willfully failed to support or has willfully failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding such parent's or guardian's incarceration, or the parent or guardian has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child. . . .

Under subdivision (1) of Section 36-1-102, "'willfully failed to support' or 'willfully failed to make reasonable payments toward such child's support' means the willful failure, for a period of four (4) consecutive months, to provide monetary support or the willful failure to provide more than token payments toward the support of the child" and "'willfully failed to visit' means the willful failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation." Tenn. Code Ann. § 36-1-102(1)(D) & (E)(2007).

We first consider whether the evidence preponderates against the trial court's determination that Father abandoned the Child pursuant to Tenn. Code Ann. §§ 36-1-102(A)(1)(i) by willfully failing to visit or make support payments for the Child. Petitioners filed the petition to adopt the Child and terminate Father's rights on April 12, 2005. Regarding visitation, Father testified that despite an oral pronouncement from the juvenile court permitting him supervised visitation, he had had no contact with the Child since his arrest in April 2003. Although Father further testified that he had attempted three times to arrange supervised visits with the Child through Gardner Place in the four months preceding the filing of the petition, the record reflects only that he completed an intake application at that facility in December 2004. Thereafter, two notices were sent in January 2005 from Gardner Place to Father advising Father that Judy had not responded to Father's application for visitation. The record reflects, as Father's only additional contact, five greetings cards sent to the Child beginning in January 2006, the year after Father's incarceration. Regarding the additional allegation of wilful failure to make reasonable support payments, Father did not dispute Petitioners' testimony that he never paid any money to support the Child. He testified that while released on bond, he lived with his mother and worked at various jobs until his bond was revoked. Father further testified as follows:

Q: During that period of time, that is the eighteen months or so from June of '03 until January of '05, did you make any contributions to the support of [the Child]?

A. I did through the courts trying to get my visitation.



Q: Did - -

A. That's the proper way of doing it without having to go and cause conflicts through person to person.

Q: Did you pay any money - -

A. I wasn't - -

Q: - - to anybody during that period of time for the support - -

A: I wasn't ordered to pay any money.

Q: Did you offer to pay any money?

A: I would have.

Q: I take it that's a, no, that you didn't offer any money?

A. I would have. If I was allowed to see him, I would have.

In summary, the evidence clearly and convincingly showed that Father wilfully failed to visit the Child or provide any monetary support for the Child during the relevant time period. Accordingly, we conclude that the evidence does not preponderate against the trial court's finding, by clear and convincing evidence, that Father "abandoned" the Child pursuant to Tenn. Code Ann. § 36-1-113(g)(1), as defined in Tenn. Code Ann. § 36-1-102(1)(A)(i).

We next consider whether the trial court properly concluded that Father abandoned the Child pursuant to Tenn. Code Ann. § 36-1-102(1)(A)(iii). The statute defines abandonment as the failure of a father to visit with or provide reasonable payments to a child's mother during the four months preceding the child's birth. At trial, the testimony was that Mother's only source of income during her pregnancy was social security disability and additional financial support she received from Petitioners. In particular, as Mother's guardian, Judy never saw Father and never received any money from Father toward Mother's support during her pregnancy. Father offered nothing to refute Judy's testimony. During this time, Father lived with his grandparents, explaining that "as far as [his] job and stuff it was hard for me to go back and forth." We conclude that the evidence does not preponderate against the trial court's finding that Father abandoned the Child pursuant to Tenn. Code Ann. § 36-1-113(g)(1), as defined in Tenn. Code Ann. § 36-1-102(1)(A)(iii).

The next issue is whether the trial court correctly found that Father abandoned the Child as defined in Tenn. Code Ann. § 36-1-102(1)(A)(iv). With respect to this ground, there is no dispute that Father was incarcerated for nearly three of the four months preceding the filing of the petition in April 2005. As we have discussed, the testimony was that Father had not visited the Child since April 2003. The record shows no further attempt to arrange for visitation with the Child after his one and only attempt through Gardner Place failed. Further, other than asserting that he worked to

provide “food and stuff” for the Child and Mother before his arrest, Father admitted that he had never provided any financial support for the Child despite working on at least three jobs in the 18 months before he was returned to custody. The evidence does not preponderate against the trial court’s finding, made clearly and convincingly, that Father abandoned the Child during the four months preceding his incarceration by his wilful failure to visit or provide monetary support to the Child.

Lastly, for purposes of Section 36-1-102(1)(A)(iv), the trial court further found that Father had engaged in “conduct which exhibits wanton disregard for the welfare of the child.” Father acknowledged that his April 2003 arrest for the offenses of which he was ultimately convicted was precipitated by an armed man arriving at the trailer that Father shared with Mother and the Child to retrieve some stolen property. Although Father could not recall any shooting, Judy testified that she went outside to find a man firing shots outside the trailer and asked him to stop shooting, explaining that her grandchild and daughter were inside. The evidence does not preponderate against the trial court’s finding, again made clearly and convincingly, that this alternative finding of abandonment was established. In summary, we conclude that the trial court properly found that Father had abandoned the Child as alleged under Tenn. Code Ann. § 36-1-102(1)(A)(iv).

## B.

Having concluded that the evidence does not preponderate against the trial court’s findings that the statutory grounds relied upon to terminate Father’s parental rights have been established, we next turn to the issue of the best interest of the Child. To this end, Tenn. Code Ann. § 36-1-113 provides a non-exclusive list of applicable factors as follows:

- (i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:
  - (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child’s best interest to be in the home of the parent or guardian;
  - (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
  - (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
  - (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

The determination of best interest should be considered from the perspective of the [child], not the parent. *In re Giorgia H.*, 205 S.W.3d 508, 523 (Tenn. Ct. App. 2006) (citations omitted).

In the present case, the trial court concluded that termination of Father's parental rights was in the Child's best interest based on its earlier findings that the Father failed to visit with or support the Child, had shown "wanton disregard" for the Child, and was subject to an extended term of incarceration. Moreover, Petitioners had raised the Child since he was three months old and the Child was apparently a happy, well-adjusted member of their family. After reviewing the statutory factors which are applicable to this case, we conclude that the evidence does not preponderate against the trial court's determination that there is clear and convincing evidence establishing that it was in the Child's best interest for Father's parental rights to be terminated.

V.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant, Bryan C., and his surety, if any, for which execution may issue. This case is remanded to the trial court, pursuant to applicable law, for enforcement of the court's judgment and for the collection of costs assessed below.

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CHARLES D. SUSANO, JR., JUDGE